

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

KEEPER SECURITY, INC.

Plaintiff,

v.

DAN GOODIN and ADVANCE MAGAZINE  
PUBLISHERS INC. d/b/a CONDÉ NAST and  
ARS TECHNICA,

Defendants.

Case No. 1:17-cv-9117

Hon. Joan Humphrey Lefkow

**DEFENDANTS' MOTION TO DISMISS**  
**PURSUANT TO FED. R. CIV. P. 12(B)(6)**

Defendants Dan Goodin and Advance Magazine Publishers Inc. (d/b/a Condé Nast and Ars Technica), by their attorneys, respectfully request that the Court dismiss the Complaint of Plaintiff Keeper Security, Inc. for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

1. Plaintiff, a software developer, is suing Defendants, a respected online technology publication and its California-based cybersecurity reporter and editor, based on an news article (the “Article”) truthfully reporting the findings of a noted Google researcher that there was a security vulnerability in Plaintiff’s password manager product, Keeper.

2. Plaintiff’s Complaint asserts claims for defamation, commercial disparagement and violation of the Illinois Deceptive Trade Practices Act (“DTPA”), 815 ILCS § 510/2. The defamation claim fails as a matter of law because the Article is substantially true; subject to an innocent construction; voices non-actionable opinions, makes statements that are not “of and concerning” Plaintiff; and Plaintiff does not and cannot plead publication with actual malice as required by the First Amendment. Plaintiff’s tag-along tort claims fail for the same reasons, and

also because the Article is not commercial speech and the DTPA only affords injunctive relief for which there is no basis here.

3. Defendants are filing herewith a memorandum of law in support of their motion.

WHEREFORE, Defendants respectfully request that the Court dismiss Plaintiff's claims in their entirety and with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6).

Dated: February 8, 2018

Respectfully submitted,

/s/ Natalie J. Spears

One of the attorneys for Defendants

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **DEFENDANTS' MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(B)(6)** was filed with the Clerk of the Court on February 8, 2018 by using the CM/ECF system, which will send a notice of electronic filing to all registered users.

/s/ Natalie J. Spears

Natalie J. Spears